

16.023 – Criminal Damage – Form of Verdict

We, the jury, duly impaneled and sworn in the above-entitled action, upon our oaths, do find the defendant,

_____ Not Guilty

_____ Guilty

of Criminal Damage.

If you find the defendant guilty, then please decide whether the total amount of **PROPERTY** damage caused by defendant's conduct is (check only one):

_____ less than \$250.

or

_____ \$250 or more but less than \$1,000.

or

_____ \$1,000 or more but less than \$2,000.

or

_____ \$2,000 or more but less than \$10,000.

or

_____ \$10,000 or more.

SOURCE: A.R.S. §13-1602 (statutory language as of ~~June 29, 2009~~ **SEPTEMBER 13, 2013**).

COMMENT: The findings contained in the special interrogatories determine the class of the offense. **STATE HAS THE BURDEN OF ESTABLISHING DAMAGES AND DEMONSTRATING THE METHOD USED TO CALCULATE THE AMOUNT. STATE V BROCKELL, 187 Ariz. 226, 928 P.2d 650 (App, 1996)**

1.0519 – Definition of “Firearm”

“Firearm” means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun or other weapon that will or is designed to or may readily be converted to expel a projectile by the action of expanding gases [EXCEPT THAT IT DOES NOT INCLUDE A FIREARM IN PERMANENTLY INOPERABLE CONDITION.]

Use Note:

LANGUAGE CONTAINED IN THE BRACKETS SHOULD ONLY BE USED WHEN EVIDENCE IS PRESENTED RAISING A REASONABLE DOUBT AS TO THE OPERABILITY OF THE FIREARM. *STATE V. ROSTHENHAUSIER*, 147 ARIZ. 486, 493, 711 P.2D 625, 632 (APP. 1985) *CITED WITH APPROVAL IN STATE V. VALLES*, 162 ARIZ. 1, 7, 780 P.2D 1049, 1055 (1989).

31.01.07 – Definition of “Prohibited Possessor”

“Prohibited possessor” means any person who:

[has been found to constitute a danger to himself/herself or to others or to be persistently or acutely disabled or gravely disabled pursuant to court order and whose right to possess a firearm has not been restored pursuant to Arizona law.]

[has been convicted within or without the State of Arizona of a felony or who has been adjudicated delinquent for a felony **[AND WHOSE CIVIL RIGHT TO POSSESS OR CARRY A GUN OR FIREARM HAS NOT BEEN RESTORED.]**]

[is at the time of possession serving a term of imprisonment in any correctional or detention facility.]

[is at the time of possession serving a term of probation pursuant to a conviction for a domestic violence offense or a felony offense, parole, community supervision, work furlough, home arrest or release on any other basis or who is serving a term of probation or parole pursuant to the interstate compact.]

[is an undocumented alien or a nonimmigrant alien traveling with or without documentation in this state for business or pleasure or who is studying in this state and who maintains a foreign residence abroad. The following are not prohibited possessors:

- (i) nonimmigrant aliens who possess a valid hunting license or permit that is lawfully issued by a state in the United States.
- (ii) nonimmigrant aliens who enter the United States to participate in a competitive target shooting event or to display firearms at a sports or hunting trade show that is sponsored by a national, state or local firearms trade organization devoted to the competitive use or other sporting use of firearms.
- (iii) certain diplomats.
- (iv) officials of foreign governments or distinguished foreign visitors who are designated by the United States Department of State.
- (v) persons who have received a waiver from the United States Attorney General.]

Use Note:

LANGUAGE WITHIN THE BRACKETED PORTION OF PARAGRAPH 2 SHOULD ONLY BE GIVEN WHEN THE DEFENDANT HAS PRODUCED EVIDENCE DEMONSTRATING THAT HIS OR HER RIGHT TO POSSESS OR CARRY A FIREARM HAS BEEN RESTORED. SEE STATUTORY CRIMINAL INSTRUCTION 31.02, AFFIRMATIVE DEFENSE TO MISCONDUCT INVOLVING WEAPONS UNDER ARS § 13-3101.A.6.B.

12.03 – ASSAULT

The crime of assault requires the proof that the defendant:

[Intentionally/knowingly/recklessly] caused a physical injury to another person; or

Intentionally put another person in reasonable apprehension of ~~immediate~~ **IMMINENT** physical injury; or

Knowingly touched another person with the intent to injure, insult, or provoke that person.

SOURCE: A.R.S. § 13-1203 (statutory language as of October 1, 1978).

USE NOTE: The court shall instruct on the culpable mental state.

“Intentionally”, “knowingly”, “recklessly”, and “physical injury” are defined in A.R.S. §13-105.

A special verdict form should be used to determine which subsection applies.

13.04 – Kidnapping

The crime of kidnapping requires proof that the defendant knowingly restrained another person with the intent to:

[hold the person (for ransom) (as a shield) (or) (as a hostage)]

[hold the person for involuntary servitude]

[inflict (death) (physical injury) (or) (a sexual offense) on the person]

[aid in the commission of a felony]

[place the victim or a third person in reasonable fear of ~~immediate~~ **IMMINENT** physical injury to the victim or such third person]

[interfere with the performance of a governmental or political function]

[seize or exercise control over any (airplane) (train) (bus) (ship) (other vehicle)].

SOURCE: A.R.S. § 13-1304 (statutory language as of May 16, 1985).

USE NOTE:

Use Statutory Definition Instruction 1.056(b) defining “knowingly.”

Use Statutory Definition Instructions 1.056(a)(1) and 1.056(a)(2) defining “intent” and “intent – inference.”

Use Statutory Criminal Instruction 13.01 defining “restrain.”

If the restriction was with the intent to commit a sexual offense on the person, the court should insert the name of the sexual offense and give an instruction defining the sexual offense.

COMMENT: A.R.S. § 13-1304(B) provides that kidnapping is a class 2 felony “unless the victim is released voluntarily by the defendant without physical injury in a safe place prior to arrest and prior to accomplishing any of the further enumerated offenses in subsection A.” In *State v. Eagle*, 196 Ariz. 188, 192, 994 P.2d 395, 399 (2000), the Arizona Supreme Court held that the factors listed in subsection B do not change the elements of kidnapping, that kidnapping is presumptively a class 2 felony, that all of the elements in B must be met to justify a decrease in the classification of the offense from a class 2 felony to a class 4 felony, that subsection B “is a mitigating factor relevant solely for sentencing purposes” and that “because the defendant alone benefits from the presence of mitigating circumstances, it is proper to place the burden of proving them on the defense” by a preponderance of the evidence. Because this is a sentencing issue and mitigating factors may be determined by the judge without a jury finding, no jury instruction or verdict form concerning subsection B has been provided. *See also State v. Tschilar*, 200 Ariz. 427, 27 P.3d 331 (App. 2001).

The *Eagle* court also noted that the kidnapping statute does not require the defendant to complete a predicate offense, such as a sexual assault; all that is required is “the intent to commit” a predicate offense. *Eagle*, 196 Ariz. at 190, 994 P.2d at 397. If the defendant has been convicted of both kidnapping and a predicate offense, the court may wish to review *State v. Gordon*, 161 Ariz. 308, 778 P.2d 1204 (1989), which discusses the factors to consider in deciding whether to impose concurrent or consecutive sentences.